

REMARKS

Claims 7 through 23 were presented for examination. The instant amendment cancels claims 13, 14, 21, and 22. Thus, claims 7 through 12, 15 through 20, and 23 remain pending in the present application upon entry of the instant amendment, which is respectfully requested.

Claims 7 through 23 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over co-pending U.S. Application No. 09/807,945. The '945 application issued as U.S. Patent No. 6,751,989 on June 22, 2004.

Applicants submit herewith a terminal disclaimer under 37 C.F.R. §1.321(c). It is respectfully submitted that the above disclaimer obviates this rejection. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 15 through 20 were previously indicated as being allowable. In light of the aforementioned terminal disclaimer, claims 15 through 20 are believed to be in condition for issuance.

Claims 7 through 12 and 23 were finally rejected under 35 U.S.C. §102(b) and/or 35 U.S.C. §103(a) over U.S. Patent No. 4,687,646 to Mateika et al. (Mateika), U.S. Patent No. 4,049,384 to Wenckus et al. (Wenckus), and French Patent No. 2,768,257 to Sobolev et al. (Sobolev).

The Office Action asserts that the "horizontal flow" aspect of claim 7 is a method limitation and not a structural

limitation and as such no patentable weight has been assigned to this limitation.

Applicants respectfully traverse this assertion.

A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used (emphasis added). See *Manual of Patent Examining Practice*, §2173.05(g).

In the present application, claim 7 recites a channel having an "open top", where the channel is "arranged so that the glass melt has a flow direction that is essentially horizontal".

It is respectfully submitted that arranging the open top channel as claimed provides structural limitation to the channel. Specifically, it is submitted that the channel "arranged" as claimed causes a specific result, namely causes the glass melt to flow in a flow direction that is essentially horizontal. Thus, it is submitted that the channel "arranged" as claimed is structurally limiting.

In contrast to the channel "arranged" as recited by claim 7, it is submitted that the systems of Mateika, Wenckus, and Sobolev are arranged for vertical flow. Mateika discloses a crucible having an open top that serves as the inlet and a bottom that serves as the outlet. Similarly, the system of Sobolev has an opening at the top and a discharge at the bottom. Wenckus discloses a crucible having an open top that serves as both the opening and the outlet.

The devices of Mateika, Wenckus, and Sobolev would need to be turned on their sides (e.g., arranged differently than is disclosed) to achieve the claimed horizontal flow. Unfortunately, this modification would render the devices of Mateika, Wenckus, and Sobolev inoperative.

Moreover, turning the devices of Mateika, Wenckus, and Sobolev on their sides to achieve the claimed horizontal flow would result in devices having an open side, not an open top as claimed.

Accordingly, it is submitted that Mateika, Wenckus, and Sobolev, alone or in combination, do not disclose or suggest claim 7.

Claim 7 is therefore believed to be in condition for allowance. Since claims 8 through 12 and 23 depend from claim 7, they are also believed to be in condition for allowance. Reconsideration and withdrawal of the rejection to claims 7 through 12 and 23 are respectfully requested.

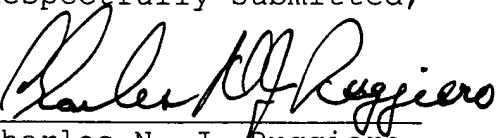
In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is earnestly solicited.

In the alternative, it is believed that the instant amendment places the present application in better condition for appeal. According, entry and consideration of the instant amendment are respectfully requested.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, he is invited to call the telephone number below.

Respectfully submitted,

Date: August 4, 2004



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